

Comment Periods specified in CERCLA
An Overview Prepared for the Walker River Paiute Tribe and Yerington Paiute Tribe
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The community involvement plan, as indicted at 40 CFR § 300.430(c)(2)(ii)(A), should “ensure the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternatives analysis, and selection of remedy...”. This allows a wide range of documents to be provided for public review and. For this site, the absence of a completed Community Involvement Plan, Draft only provided in 2011 and never completed, creates uncertainty in the ability of the public to be informed of site activities and provide comments.

Generally, comments periods of 30 days are required for any substantial action under CERCLA. Longer review periods of 60 days are more typical and even expected for other involved regulatory agencies including Tribes. For example, the Draft Community Involvement Plan for the Anaconda Mine Site (2011) provided for a 45 day review period of the OU8 Feasibility Study. These comment periods are required as described in CERCLA and vary with document and/or action.

The following citations, found in the EPA Community Involvement Toolkit (<https://clu-in.org/ci handbook/CIOCpage/publiccomm.htm>) are useful to highlight the need for review periods for a deferred site to be “CERCLA equivalent.” After recent comments from NDEP during the roundtable meeting on July 17, 2017, it became evident that this information was not being included in their proposed schedule.

- Additions to the NPL
 - The NCP, at 40 CFR § 300.425(d)(5)(i), requires that “[t]o ensure public involvement during a proposal to add a release to the NPL, EPA shall [p]ublish the proposed rule in the *Federal Register* and solicit comments through a public comment period...”
- For the Proposed Plan
 - CERCLA § 117(a)(2) requires that the Agency provide a “reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility.”
 - The NCP, at 40 CFR § 300.430(f)(3)(c), specifies that the Agency must “[p]rovide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the proposed plan and the supporting analysis and information located in the information repository, including the RI/FS. Upon timely request, the lead agency will extend the comment period by a minimum of 30 additional days...”

- For Consent Decrees and Enforcement Agreement
 - The NCP, at 40 CFR § 300.430(c)(5)(i), requires that “[l]ead agencies entering into an enforcement agreement with de minimis parties... must allow an opportunity for comment and consideration of comments...”
 - CERCLA § 122(d) requires a public comment period for all consent decrees, regardless of nature or purpose.
 - 28 CFR 50.7 requires that a notice of any consent decree appear in the Federal Register 30 days prior to filing it in court, during which the agency must accept comments from the public to be reviewed by the Department of Justice.
- For Other Settlements
 - CERCLA § 122(i)(2) requires that settlements be posted in the *Federal Register* at least 30 days prior to becoming final and that the agency open a comment period.
- For a Revised Proposed Plan
 - The NCP, at 40 CFR § 300.430(f)(3)(ii)(B), requires an “additional public comment period on a revised proposed plan, when the lead agency determines the change could not have been reasonably anticipated by the public based on the information available in the proposed plan or the supporting analysis and information in the administrative record.”
- For deletion of a site from the NPL
 - The NCP, at 40 CFR § 300.425(e)(4)(i), requires the Agency to “[p]ublish a notice of intent to delete in the *FEDERAL REGISTER* and solicit comment through a public comment period of a minimum of 30 calendar days...”
- Actions with planning periods less than six months
 - The NCP, at 40 CFR § 300.415(n)(2)(ii), requires a “public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection.”
- Actions with planning periods greater than six months
 - The NCP, at 40 CFR § 300.415(n)(4)(iii), requires not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a) upon timely request.

The public review period for deferral cannot start until draft final documents are prepared for review. EPA comments received on July 27, 2017 and the MOU for EPA, NDEP and YPT received on August 1, 2017, indicate that those will be future drafts. Agencies cannot ask for public comment without documents complete enough to describe the intended action and minimum review periods are 30 days, allowing for 60 day minimums for important or extensive

documents.